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1. INTRODUCTION

Amnesty International submits this briefing to the United Nations (UN) Committee on the Elimination of Discrimination against Women (the Committee) in advance of its preparation of the List of Issues Prior to Reporting in November 2019. Amnesty International will provide additional information in advance of Canada's CEDAW review in November 2020.

2. VIOLENCE AGAINST INDIGENOUS WOMEN, GIRLS, AND TWO-SPIRIT PERSONS

Indigenous women and girls are more likely to experience violence than non-Indigenous women and girls in Canada. The true extent of the violence remains unknown because of poor data collection on the Indigenous identity of victims of violent crime, but testimony gathered by the National Inquiry into Missing and Murdered Indigenous Women and Girls, demonstrated that the scale and scope of violence against First Nations, Inuit, and Métis women, girls, and two-spirit persons – and Canada's failure to prevent, address, and redress this violence – remains one of the most egregious and urgent human rights concerns in Canada. The release of the National Inquiry into Missing and Murdered Indigenous Women and Girls's final report on 3 June 2019 supplemented an already extensive body of knowledge both about the threats facing Indigenous women, girls, and two-spirit persons, and the measures necessary to end the violence and ensure justice for survivors.¹ The issues highlighted in the National Inquiry's final report have been raised by Indigenous women, Parliamentary Committees,² international human rights bodies, including CEDAW,³ as well as international organizations like Amnesty International.⁴

With the release of the National Inquiry's final report, the government of Canada can no longer deny the scale or scope of violence against Indigenous women, girls and two-spirit persons, and must take urgent, concrete action in keeping with the severity of this human rights crisis. Amnesty International is concerned that over three months have passed since the National Inquiry's final report was released, and the federal government has yet to officially respond to it.

The adoption of a human rights-based approach that centres the needs, voices, and expertise of Indigenous women, girls, and two-spirit persons is needed to effectively address the systemic and root causes of violence. This involves addressing the impacts of colonization, intersectional discrimination, inherent biases, and continued social and economic marginalization, including the heightened risks of violence in situations

¹ National Inquiry into Missing and Murdered Indigenous Women and Girls, "Final Report," June 2019.

² House of Commons, Special Committee on Violence Against Indigenous Women, 16 October 2013-2 August 2015, 41st Parliament, 2nd Session.

³ CEDAW, "Concluding observations", CEDAW/C/CAN/CO/8-9/Add.1, 16 April 2019.

⁴ Amnesty International, "Final Written Submission to the National Inquiry into Missing and Murdered Indigenous Women and Girls," 30 November 2018.

of overcrowded housing, homelessness, and commercial sex,⁵ and the failure to publicly condemn, investigate, and punish acts that normalize violence and discrimination against Indigenous peoples in Canada.⁶

It is crucial that all levels of government act promptly on the National Inquiry's Calls for Justice as part of a comprehensive, coordinated national response that fully addresses the scale and severity of this crisis.

2.1 RECOMMENDATIONS

Amnesty International recommends that Canada:

- Work with Indigenous governance and civil society advocates to ensure substantive equality in access to all government services and programs (i.e. housing, health, and education), including culturally-relevant programs to prevent violence that effectively ensure the safety of Indigenous women, girls, and two-spirit persons and support survivors of violence.
- Launch a national task force to review and reopen cases of missing and murdered Indigenous women, girls, and two-spirit persons that have not been properly investigated.
- Ensure all allegations of police abuse of power, including violence and sexual assault, are handled by independent, civilian complaints mechanisms, with sufficient support, protection, and redress provided to victims.

3. NATIONAL ACTION PLANS ON GENDER-BASED VIOLENCE

The development and implementation of a National Action Plan to prevent and address gender-based violence is necessary to fulfil Canada's international human rights commitments.⁷ States are specifically required to have "executive policies or plans of action to eliminate violence against women."⁸ Despite playing a leading role in promoting National Action Plans at the UN Human Rights Council, Canada has failed to live up to this obligation domestically. Many governments specifically called on Canada to commit to developing a National Action Plan when Canada's human rights record was reviewed by the UN Human Rights Council in May 2018.⁹

In June 2017, the federal government launched *It's Time: Canada's Strategy to Prevent and Address Gender-Based Violence*.¹⁰ Alongside a broad coalition of women's rights and equality-seeking organizations, Amnesty International has underscored the strategy's insufficiency because it only covers areas under federal jurisdiction.¹¹

A truly comprehensive National Action Plan involving the federal, provincial, territorial, municipal, and Indigenous governments and governance is needed to address gaps and shortcomings in current policies, programs, and services, and to ensure policy and programming coherence and consistency. The plan must be well-resourced, including significant new funds for women's rights and equality-seeking organizations.

⁵ Amnesty International, *No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence against Indigenous Women in Canada*, AMR 20/012/2009.

⁶ Final Written Submission to the National Inquiry, *supra* note 4.

⁷ UN Women, "UNITE to End Violence against Women."

⁸ UN General Assembly, "In-depth study on all forms of violence against women: report of the Secretary General," UN.Doc.A/61/122/Add.1, 2006; and UNDOCS.org/A/61/122/Add.1, para 284.

⁹ UN Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Canada," A/HRC/39/11, 2018.

¹⁰ Status of Women Canada, "Strategy to Prevent and Address Gender-Based Violence," Government of Canada, 3 July 2018.

¹¹ Letter from Amnesty International and 25 organizations to Prime Minister Justin Trudeau, "Urgent Need for National Action Plan to Prevent and Address Gender-Based Violence in Canada," 8 March 2018.

The federal government is best placed to initiate and lead the development and adoption of a National Action Plan.

The National Inquiry called for a National Action Plan on violence against Indigenous women, girls, and two-spirit persons. Prime Minister Justin Trudeau accepted this recommendation when the National Inquiry's report was released on 3 June 2019.¹² Such a plan should be harmonized with and sit alongside a broader National Action Plan on all forms of violence against all women, transgender, and non-binary people in Canada. As of September 2019, the government of Canada had not publicly released a timeline or plan to develop the Indigenous-specific National Action Plan.

3.1 RECOMMENDATIONS

Amnesty International recommends that Canada:

- Develop and implement a coordinated, comprehensive, and well-resourced National Action Plan to Prevent and Address Gender-Based Violence that addresses all forms of gender-based violence against all women, transgender, and non-binary people in Canada. The federal government must develop the plan with civil society organizations, as well as provincial, territorial, municipal, and Indigenous governments and governance.
- Develop and implement a coordinated, comprehensive, and well-resourced National Action Plan to Prevent and Address Violence Against Indigenous Women, Girls, and Two-Spirit Persons, guided by rights holders, that is well coordinated with and sits alongside a National Action Plan to Prevent and Address Gender-Based Violence. The federal government must work with Indigenous women's organizations and grassroots advocates, as well as civil society organizations, and provincial, territorial, municipal, and Indigenous governments and governance to develop the plan.

4. GENDER, INDIGENOUS RIGHTS AND ENERGY DEVELOPMENT

A growing body of studies and reports draw links between intensive resource development and negative social impacts in communities which host those activities.¹³ These negative impacts include social strain, gender-based violence, economic inequalities, and shortages of affordable housing.¹⁴ In addition to often occurring without adequate consent of affected communities or consideration of human rights impacts, large-scale resource development projects in Canada can also have distinct, unintended and harmful impacts on women, and Indigenous women, girls and two-spirit persons in particular.¹⁵ Failure to identify and mitigate these impacts inevitably compounds already unacceptable risks to the lives of Indigenous women, girls, and two-spirit persons.¹⁶

¹² Catharine Tunney, "Trudeau says deaths and disappearances of Indigenous women and girls amount to 'genocide'," *CBC*, 4 June 2019.

¹³ Amnesty International, *Out of Sight, Out of Mind: Gender, Indigenous Rights, and Energy Development in Northeast British Columbia, Canada*, AMR 20/4872/2016, 2016.

¹⁴ *Ibid.*, pp. 17, 33-35.

¹⁵ *Ibid.*

¹⁶ Amnesty International, Submission to House of Commons Committee on Bill C-69, 6 April 2018.

Amnesty International's research has documented the negative impacts of resource development on gender and Indigenous rights,¹⁷ including an increase in exposure to risks of violence for Indigenous women, girls and two-spirit persons, which is compounded by dangerous patterns of anti-social behaviour among transient workers;¹⁸ decreased access to already-strained social services; and the negative impacts of loss of land on culturally-based healing and wellness.¹⁹ At the same time, the impacts of extensive resource development have undermined the ability of Indigenous women and girls to meet their healing and wellness needs through traditional activities and ceremonies on the land.²⁰

In June 2019, the Senate passed Bill C-69, the Impact Assessment Act, legislation that calls for a more holistic impact assessment of resource development projects, including a gender-based analysis to ensure that future assessments consider how social, economic, health, and environmental impacts may be different for people of different genders. Although a welcomed legal development, gaps remain in the assessment process that continue to put at risk human rights associated with resource development projects. For instance, the Act only applies to projects under federal jurisdiction, and few provinces and territories include gender-based analysis in their assessment processes.²¹

4.1 RECOMMENDATIONS

Amnesty International recommends that Canada:

- Require that all reviews, approvals, and impact assessments of resource development projects – under federally and provincial/territorial jurisdiction – be informed by a comprehensive, intersectional gender-based analysis, conducted in consultation with women's rights, LGBTI (lesbian, gay, bisexual, transgender and intersex) rights, and Indigenous organizations, including an intersectional analysis of the specific impacts on Indigenous women, girls, and two-spirit persons.
- Require all provinces and territories to mandate intersectional gender-based analysis in the assessment process for all large-scale resource development projects.

5. STERILIZATION OF INDIGENOUS WOMEN WITHOUT CONSENT

Racial bias against Indigenous peoples in the provision of public services in Canada is a well-known problem.²² This discrimination has led to medically unnecessary sterilizations – mostly tubal ligations – without the free, full, and informed consent of Indigenous patients. Forced or coerced sterilization of Indigenous women in Canada has been documented from the 1800s to the present.²³ In the 1970s, there were about 1,200 cases of coerced sterilization of Indigenous women, reportedly intended to reduce the

¹⁷ Amnesty International, *Out of Sight, Out of Mind*, *supra* note 16.

¹⁸ *Ibid*, p. 37.

¹⁹ *Ibid*, pp. 17, 33-35.

²⁰ Final Written Submission to the National Inquiry, *supra* note 4.

²¹ Amnesty International, "Does Canada's new impact assessment legislation protect human rights?" 30 August 2019.

²² Dr. Judith Bartlett and Dr. Yvonne Boyer, *External Review: Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women*, Saskatoon Regional Health Authority, 2017, p.31.

²³ Maurice Law, "Request for a thematic hearing on the forced sterilization of Indigenous women in Canada, File no. 434.01," Submission to Inter-American Commission on Human Rights, 6 December 2017; and Dr. Judith Bartlett and Dr. Yvonne Boyer, *External Review: Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women*, Saskatoon Regional Health Authority, 2017.

numbers of Indigenous persons in Canada.²⁴ In July 2017, the Saskatoon Regional Health Authority released the report of an external review commissioned after at least four Indigenous women reported that they had been coercively sterilized in a Saskatoon hospital, primarily between 2008 and 2012.²⁵ It is unknown how many Indigenous people in Canada have been sterilized without their consent, but there is compelling evidence that the practice has not ceased.²⁶ As of February 2019, a lawyer leading a class action lawsuit in Saskatchewan had received over 100 disclosures from women that they had been sterilized without providing free, full, and informed consent.²⁷ All but one of these women were Indigenous.²⁸

In December 2018, the UN Committee Against Torture (UNCAT) affirmed that forced and coerced sterilization of women in Canada is a form of torture – because this practice is intentional, committed by state officials, causes serious harm, and is rooted in discrimination – and called on Canada to take steps to investigate the issue, halt the practice, ensure justice for survivors, and report back to the Committee on progress made within a year.²⁹

In August 2019, the House of Commons Health Committee called on the federal government to take urgent action on the issue of forced and coerced sterilization in Canada. While expressing concern that the practice has continued in Canada, the federal government has yet to take concrete action to implement the recommendations from UNCAT.³⁰

5.1 RECOMMENDATIONS

Amnesty International recommends that Canada:

- Ensure that allegations of forced or coerced sterilizations of women are thoroughly investigated;
- Establish policies and accountability mechanisms applicable across Canada that provide clear guidance on how to ensure sterilizations are only performed with free, full, and informed consent;
- Provide access to justice for survivors of sterilization without consent.

6. THE RIGHTS OF INTERSEX PERSONS

In many parts of the world, including in Canada, measures that recognize and provide meaningful human rights protections to intersex persons are weak or non-existent. Every year, an estimated 1.7% of people worldwide are born with sex characteristics (genitals, gonads, hormones, chromosomes or reproductive organs) that vary from the established norms for ‘male’ and ‘female’.³¹ Often, individuals whose sex characteristics are perceived not to meet standards for ‘male’ and ‘female’ are subjected to discrimination and attempts to ‘normalize’ their bodies through surgery and/or hormone treatments.³²

²⁴ Roger Collier, “Reports of Forced Sterilization of Indigenous Women in Canada Mirror Shameful Past,” *Canadian Medical Association Journal*, Vol. 21, Issue 33, August 2017.

²⁵ “Saskatoon health region apologies after aboriginal women felt pressured by staff to have tubed tied,” *National Post*, 17 November 2015; and “Another Saskatoon Woman Says She Was Sterilized Against Her Will,” *CBC*, 16 December 2015.

²⁶ “Indigenous women kept from seeing their newborn babies until agreeing to sterilization, says lawyer,” *CBC*, 13 November 2018.

²⁷ Interview with Alisa Lombard, Maurice Law, 27 February 2019.

²⁸ *Ibid.*

²⁹ Amnesty International, “Sterilizing Indigenous Women without Consent is Torture, says UN Committee,” 7 December 2018.

³⁰ Kristy Kirkup, “Committee ‘deeply disturbed’ by reports of coerced, forced sterilization,” *CBC*.

³¹ Amnesty International, *No Shame in Diversity: The Right to Health for People with Variations of Sex Characteristics in Iceland*, 2019 EUR 28/9498/2019, p. 8.

³² *Ibid.*

Children in Canada who are born with visible variations to their sex characteristics still undergo non-emergency, invasive, and irreversible surgeries and hormonal treatments that can cause both short and long-term harm. Section 268(3) of the Criminal Code of Canada allows for parents and medical practitioners to undertake non-consensual, cosmetic surgeries on intersex infants that have proven to result in lifelong physical and psychological harm.³³ The current law functions to normalize surgical interventions based on assumptions about medically “correct” bodies.³⁴

In 2018, the Egale Canada Human Rights Trust held the first conference on intersex rights in Canada, and then called on the government of Canada to “Investigate cases of intersex genital mutilation and other medical malpractices pertaining to nonconsensual, cosmetic surgeries on intersex children; and follow best practices by providing free and informed consent, in compliance with its international treaty body obligations.”³⁵ As of September 2019, the government of Canada had not taken steps to implement Egale’s recommendations.

Medically unnecessary surgeries are being performed on intersex children in Canada without their free, full and informed consent,³⁶ and non-consensual surgeries and hormone treatments implicate the rights of the child, the rights to the highest attainable standard of health, to a private life and to physical and bodily integrity, and the right to freedom from discrimination and the elimination of practices based on gender stereotypes.

6.1 RECOMMENDATIONS

Amnesty International recommends that Canada:

- End medically unnecessary sex-normalizing surgeries, sterilization, and hormone treatments on intersex children without their free, full, and informed consent in a manner that does not entail criminal penalties;
- Initiate a national consultation with intersex persons to inform amendments to the Criminal Code to prohibit non-consensual and medically unnecessary surgeries on intersex children; and
- Ensure medical and healthcare professionals receive training on gender and body diversity, focusing on individuals with variations in sex characteristics, which does not perpetrate gender stereotypes.

7. PROTECTING THE HUMAN RIGHTS OF SEX WORKERS

The criminalization of sex work, and the current state of the law in Canada with respect to sex work,³⁷ creates barriers to the realization of the human rights of sex workers in Canada.³⁸

³³ Egale Canada, “Egale Canada urges the Federal Government to meet domestic and International Human Rights requirements of Intersex People on International Intersex Awareness Day,” 26 October 2018; and Amnesty International, *No Shame in Diversity*, *supra* 34.

³⁴ Egale Canada, *supra* 36.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Amnesty International uses the term “sex work” to mean the exchange of sexual services (involving sexual acts) between consenting adults for some form of remuneration, with the terms agreed between the seller and the buyer. Where consent is absent for reasons including threat or use of force, deception, fraud, and abuse of power or involvement of a child, such activity would constitute a human rights abuse, to be treated as a criminal offence.

³⁸ Amnesty International, “Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers,” 26 May 2016, POL 30/4062/2016, p. 2.

Sex workers in Canada are overwhelmingly women and LGBTI individuals and are among the most marginalized and stigmatized groups in society. Sex workers face an increased risk of violence and abuse, and crimes against them often go unreported, under-investigated, and/or unpunished, offering perpetrators impunity.³⁹ Amnesty International's position on sex work focuses on protecting the rights of sex workers from human rights abuses including violence, the denial of equal protection before the law, exclusion from medical services, forced evictions, and other forms of discrimination and marginalization.

In December 2013, the Supreme Court of Canada in *Canada (Attorney General) v. Bedford* declared that three provisions of Canada's Criminal Code were unconstitutional: section 210 (keeping or being found in a bawdy house), section 212(1)(j) (living on the avails of prostitution), and section 213(1)(c) (communicating in public for the purpose of prostitution).⁴⁰ These provisions were struck down by the Court for violating the right to security of the person under the *Charter of Rights and Freedoms* by imposing dangerous conditions on sex work.⁴¹ The court in *Bedford* gave the federal government one year to introduce new Charter-compliant legislation. In December 2014, the *Protection of Communities and Exploited Persons Act* (PCEPA) was passed. Amnesty International is deeply concerned that rather than strengthening rights protections for sex workers in Canada, the PCEPA has further marginalized and heightened risks to their security.

With a declared purpose to eliminate sex work, the PCEPA introduced four new criminal offences, including modifications to the provisions declared unconstitutional in the *Bedford* ruling. These involve criminalizing the purchase of sexual services, preventing sex workers from communicating with clients to screen them, and preventing sex workers from organizing their own security.⁴² Under the PCEPA, sex workers have become further marginalized and are exposed to substantially greater risk. Since the PCEPA's enactment, sex workers have faced increased levels of targeted violence, stigmatization and discrimination.⁴³

7.1 RECOMMENDATIONS

Amnesty International recommends that Canada:

- Develop a rights-based, gender sensitive and intersectional approach to Canada's laws regarding sex work that is both compliant with Canadian *Charter of Rights and Freedoms* and meets Canada's international human rights obligations.
- Conduct a review of the PCEPA to assess the impacts of the current legislative framework on the human rights of sex workers;
- Enforce the application of existing criminal laws without discrimination to protect sex workers from violence and discrimination including, notably, laws regarding the sexual exploitation of children, sexual assault and trafficking.
- Ensure equal access to justice by investigating and prosecuting crimes against sex workers without discrimination, in addition to refraining from discriminatory enforcement against sex workers.

³⁹ *Ibid.*

⁴⁰ *Canada (Attorney General) v Bedford*, 2013 SCC 72.

⁴¹ *Bedford*, para 60.

⁴² Protection of Communities and Exploited Persons Act, S.C. 2014, c. 25.

⁴³ Final Written Submission to the National Inquiry, *supra* note 5.

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In this submission, Amnesty International sets out its concerns about the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention) by Canada, including (i) the implementation of Canada's international human rights obligations; (ii) violence against Indigenous women, girls, and two-spirit persons (iii) National Action Plans on gender-based violence; (iv) gender, Indigenous rights, and energy development; (v) sterilization of Indigenous women without consent; (vi) the rights of intersex persons; and (vii) protecting the human rights of sex workers.